87

Supreme Court, U.S.
FILED
071186 JAN 25 2008
OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

IN RE MARY LYNN COLLARD,
Defendant-(Relator)-Relator-Relator-Relator.

(from **STATE OF TEXAS v. COLLARD**)

ON PETITION FOR A WRIT OF MANDAMUS
TO THE COURT OF APPEALS FOR THE
FIFTH DISTRICT OF TEXAS AT DALLAS, AND/OR
TO THE COURT OF CRIMINAL APPEALS OF TEXAS

ORIGINAL PETITION FOR A WRIT OF MANDAMUS

WITH APPENDIX A

MARY LYNN COLLARD
1615 UNIVERSITY DRIVE
RICHARDSON, TEXAS 75081

Questions Presented for Mandamus

STATUTORY CHALLENGE

1. Does TEX. R. APP. P. 52.1 violate Due Process?

Federal Questions

2. Is *access* an issue of first impression?

3. What authority does the second ruling have?

4. Is, "There's no order," relevant where the problem is inaction?

5. Even if this were an issue of first impression in *Texas* jurisprudence, how does refusal to file documents avoid mandamus?

Mandamus

6. Does either appellate court have discretion to refuse to compel the county court to file the documents?

Parties

This started in the municipal court of (***public***) Record. The mandamus sought is directed to the state appellate court and/or to the state court of criminal appeals.

Municipal Court of (***public***) Record Plaintiffs

STATE OF TEXAS
[via CITY OF RICHARDSON, TEXAS]

PETER G. ("PETE") SMITH,
JOE GORFIDA,
KAREN NELSON,
all with NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.

Municipal Court of (***public***) Record Defendant

MARY LYNN COLLARD

State appellate court

COURT OF APPEALS FIFTH DISTRICT OF TEXAS AT DALLAS, Hon. LINDA THOMAS, Chief Justice

Hon. GREG ABBOTT
Attorney General
STATE OF TEXAS

State court of criminal appeals

COURT OF CRIMINAL APPEALS OF TEXAS, Hon. SHARON KELLER, presiding judge

[ABBOTT]

County appellate court

COUNTY CRIMINAL COURT OF APPEALS OF DALLAS COUNTY, Hon. KRISTIN WADE, presiding judge

[ABBOTT]

Municipal Court of (*public*) Record

RAYMOND D. NOAH ("judge")

KIMBERLY (KIM) KIERCE (Clerk, Court Administrator)

[NICHOLS & DIMES]

Petition for a Writ of Mandamus

Collard petitions for a writ of mandamus to the state appellate court and/or to the state court of criminal appeals as follows:

Citations to decisions below

None

Jurisdiction

(i) Date Orders Were Entered

- *County appellate court*

The *inaction* at issue continues to this very day, renewing the time period daily.

- *State appellate court*

Petition for mandamus denied:
First panel: 18 Dec 2007 [+90: 17 Mar 2008]
Second panel: 4 Jan 2008 [+90: 3 Apr]

- *State court of criminal appeals*

Petition for mandamus filed: 28 Dec 2007
M/Supp. filed: 17 Jan 2008
"M/Leave" denied (w/o order): 27 Feb 2008
[+90: 27 May]

(ii) Extensions None

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. § 1651(a).

(v) Regarding notice of statutory challenge, Rule 29.4(c)
28 U.S.C. § 2403(b) may apply. No court has certified any issues to the state AG.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

When Federal Questions Were Raised

One more *Boddie* in berserk extreme process.

The county appellate court has refused to file Collard's mandamus petition and motion for stay (the "documents") since 6 Nov., when originally presented in person. Nothing has been returned; no reason for the inaction is given.

Then, the state appellate court declared, but refused to resolve, an issue of first impression.

Related cases

In re Collard, __ U.S. __ (2 Oct 2006) (mand. denied) (No. 05-1445).

Collard v. Texas, __ U.S. __ (16 Jan 2007) (cert. denied) (No. 06-733).

In re Collard, No. 07-1077 (pending).

Texas courts are parties, not judges

"Judges" v. *pro se*'s.

What compels a *pro se* v. "judge" *counter*claim? The unending barrage of "judge" v. *pro se* **claims** instigated by the bench.

The courts in Texas make themselves parties in *pro se* cases, advocating their political agendas, rendering themselves to ***be*** the law, rather than jurists who ***apply*** the law. The exception, which exists, very, very rarely, but exists, more than amply proves up this general rule.

Refusal to perform duties from bottom to top!

MUNICIPAL COURT REFUSED TO FOLLOW THE LAW.

When the municipal court of (***public***) Record refused to dismiss, etc., Collard submitted the documents to the county appellate court.

COUNTY APPELLATE COURT REFUSES TO FILE THE DOCUMENTS.

The fact compelling this petition, and all its precursor supplemental state appellate activity, is that to this very day the county appellate court refuses even *to file* the documents.

STATE APPELLATE COURT REFUSED TO APPLY THE LAW.

Collard sought mandamus to motivate the county appellate court to file the documents. The state appellate court denied mandamus, *twice* (two different panels). The first panel characterized Collard's issues as questions of first impression. In light of *Boddie v. Connecticut*, 401 U.S. 371 (1971), Collard finds no justification in such characterization and even less justification for denial of mandamus.

STATE APPELLATE COURT THEN LOST ITS MIND.

Via its unsurpassable brilliance, the second panel found no order to review. Isn't it just unbelievably amazing that where the issue is *inaction* that there is also *no order* to review?!

The first ruling was not withdrawn or overruled. It was simply "supplemented."

COURT OF CRIMINAL APPEALS GETS THE PRIZE FOR THE LARGEST "SIDE-STEP."

"The Governor's Side-Step" is one of the song and dance routines in "The Best Little Whorehouse in

Texas," a very popular Broadway show. The state appellate court takes its lead from Austin, and Austin keeps teaching them that the law doesn't apply for the benefit of *pro se* litigants. Should there be evidence to the contrary, that same evidence instantly proves up the "class of one" problem.

The state court of criminal appeals seems to have preferred the second ruling to the first. They construed the petition, as supplemented, as a motion for leave and denied the "motion."

Here's the challenged Rule.

> 52.1 Commencement. An original appellate proceeding seeking extraordinary relief--such as a writ of habeas corpus, mandamus, prohibition, injunction, or quo warranto--is commenced by filing a petition with the clerk of the appropriate appellate court. The petition must be captioned "In re [name of relator]."

TEX. R. APP. P. 52.1.

"DO AS I SAY, NOT AS I DO"—THE FLIP SIDE.

By conduct, the state appellate court did just fine, conforming to the commonsense understanding of this Rule. When Collard submitted her petition for mandamus, the state appellate court filed it and assigned a case number, just as the Rule requires. However, despite *Boddie*, they have refused *to tell* the county appellate court to do the same.

By conduct, the state court of criminal appeals also did just fine, conforming to the commonsense understanding. When Collard submitted her petition, the state court of criminal appeals filed it and assigned a case number. However, despite *Boddie*,

they, too, have refused *to tell* the county appellate court to do the same.

Because the county appellate court is a "criminal case only" jurisdiction court, mandamus in the state supreme court seems irrelevant.

Argument

STATUTORY CHALLENGE

1. Does TEX. R. APP. P. 52.1 violate Due Process?

The Rule isn't the problem.

When read in light of how the state appellate courts act on it, the Rule is fine. It establishes a non-discretionary duty *to file* the documents. In light of *Boddie*, this is not terribly complicated.

The political application of it is the problem.

However, when read in light of how the state appellate courts refuse to enforce it, the Rule is not fine. The present "reading" grants the county appellate court discretion no other (appellate) court has. *Boddie*.

Even if the county appellate court's jurisdiction were *discretionary*, the problem would still exist. Even the court of criminal appeals acts on the duty *to file* the documents. Judicial discretion isn't in the *filing*, but in the actions taken on what's filed.

Cf. Village of Willowbrook v. Olech, 528 U.S. 562 (2000) ("class of one" fully recognized where intentional, irrational, reproducible governmental *action* is involved). *Inaction* is just as subject to intent, irrationality, and reproducibility.

The Due Process duty to speak.

Ultimately, parties can't really control the *filing*. This begs the question of the court's discretion. If discretion exists, at all, discretion in silence doesn't.

Federal Questions

2. Is *access* an issue of first impression?

No! *Boddie*.

But, if it were, leaving it open defies Due Process.

3. What authority does the second ruling have?

The state appellate court's second ruling doesn't even recognize the first. Thus, it is most likely a void judgment (no jurisdiction).

It could be a "supplement," i.e., another reason for the same political result. However, that policy allows spontaneous appellate activity giving rise to the exact problem seen here: facially inconsistent rulings. Moreover, if two panels may participate, why not three, etc.? When is "final" "final?"

4. Is, "There's no order," relevant where the problem is inaction?

If the second panel ever had authority, their position is sanctionably mindless. It's humanly impossible to produce an order where the problem is *inaction*. *Cf. Marbury v. Madison!*

5. **Even if this were an issue of first impression in *Texas* jurisprudence, how does refusal to file documents avoid mandamus?**

Due Process, including *access*, is a ***federal*** question. Thus, in light of *Boddie*, *Hill v. Fifth District*, 34 S.W.3d 924 (Tex. Crim. App. 2001), is screamingly, even sanctionably, irrelevant.

Mandamus

6. **Does either appellate court have discretion to refuse to compel the county court to file the documents?**

The right of access is very clearly established. *Boddie.*

Kerr v. United States Dist. Court for N. Dist. of Cal., 426 U.S. 394 (1976); *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379 (1953).

Remedies Requested

Given the foregoing, Collard requests

1. That this Court assert its supervisory authority in aid of its appellate jurisdiction;
2. That this Court supply supervisory guidance, and where appropriate, issue a writ of mandamus;
3. That this Court vacate the state court of criminal appeals' ruling, vacate both state appellate court rulings, and order STATE to refund Collard's state appellate court filing fee and all costs

involved in preparing and serving those petitions in both appellate courts of focus, here;

4. That this Court also order STATE and/or the two appellate courts of focus, jointly and severally, to pay Collard delay sanctions of $5,000 for the mindless, dilatory, manifestly bad faith, and sanctionably frivolous rulings;

5. That this Court reaffirm *Boddie*, leaving no doubt that (1) *access* is not an issue of first impression, (2) "there's no order" is irrelevant where the issue is inaction, and (3) the county appellate court has to file the documents, or else justify the non-filing within a commercially reasonable time period;

6. The opportunity to brief any additional issues the Court may identify;

7. The non-argument calendar;

8. Costs; and

9. Any and all other relief at law, in equity or sui generis to which she may show herself justly entitled.

Respectfully submitted,

/s/ Mary Lynn Collard
Mary Lynn Collard
I reserve all my rights
1615 University Drive
Richardson, Texas 75081

Verification

Per 28 U.S.C. § 1746, under the penalty of perjury, I, Mary Lynn Collard, depose and declare (or certify, verify or state), that I am at least 21 years of age, that I am competent to make this Affidavit, that I have personal knowledge of these facts, and that these facts are true and correct.

The facts stated in this Petition for a Writ of Mandamus are true and correct.

Further, Declarant sayeth not.

Executed on this the 14th of March, 2008

/s/ Mary Lynn Collard
MARY LYNN COLLARD, Declarant

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Appendix A

Rule 14.1(i)(i)—Appellate OpinionS

2007 Dec 18—First panel's denial of mandamus Order

Order issued December 18, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-01613-CV

IN RE MARY LYNN COLLARD,
Relator

Original Proceeding from the
County Court of Criminal Appeals [1] No. 1 [2]
Dallas County, Texas

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[1] [N.B. *But see* TEX. GOV'T CODE ANN. § 25.0591(c)(1) (County *Criminal* Court of Appeals, not County *Court* of Criminal Appeals). *MLC*]

[2] [N.B. No such court. TEX. GOV'T CODE § 25.0591(c)(1) creates "County Criminal Court of Appeals of Dallas County;" § 25.0591(c)(2), "County Criminal Court of Appeals No. 2 of Dallas County." (emphasis added). But, there is no County *Court* of Criminal Appeals of Dallas County of any "No.," and there is no County *Criminal* Court of Appeals No. 1 of Dallas County. *MLC*]

ORDER

Before Justices Whittington, FitzGerald, and Lang-Miers

Based on the Court's opinion of this date, we **DENY** relator's petition for writ of mandamus. We **ORDER** that relator Mary Lynn Collard bear the costs of this original proceeding

/s/ Mark Whittington
MARK WHITTINGTON
JUSTICE

Opinion

Writ of Mandamus Denied; Opinion Issued December 18, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-01613-CV

IN RE MARY LYNN COLLARD,
Relator

Original Proceeding from the
County Court of Criminal Appeals No. 1
Dallas County, Texas

MEMORANDUM OPINION

Before Justices Whittington, FitzGerald,
and Lang-Miers
Opinion by Justice Whittington

Relator complains the trial judge [3] has not taken action on her mandamus petition or ruled on her "motion for stay." Based on the record presented, relator has not shown that she is entitled to relief. *See* TEX. R. APP. P. 52.8 (a): *State ex rel. Hill v. Court of Appeals for Fifth Dist.*, 34 S.W.3d 924, 927 (Tex. Crim. App. 2001). [4] Accordingly, relator's petition for mandamus is **DENIED**.

/s/ Mark Whittington
MARK WHITTINGTON
JUSTICE

071613F.P05

[3] [N.B. ***trial*** judge? *Cf. e,g,* nn.1, 2, *supra. MLC*]

[4] [N.B. This suggests that Collard has raised an issue of first impression. *Access* is not an issue of first impression, and not addressing it leaves the issue totally unresolved. *MLC*]

2008 Jan 4—*Second* panel's denial of same mandamus petition.

Order

Order issued January 4 , 2008

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-01760-CV

IN RE MARY LYNN COLLARD,
Relator

Original Proceeding from the
County Court of Criminal Appeals [5] No. 1 [6]
Dallas County, Texas

O R D E R

Before Justices Wright, O'Neill, and Lang

Based on the Court's opinion of this date, we **DENY** relator's petition for writ of mandamus. We **ORDER** that relator Mary Lynn Collard bear the costs of this original proceeding.

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[5] [N.B. *See* n.1, *supra*. *MLC*]

[6] [N.B. *See* n.2, *supra*. *MLC*]

/s/ Carolyn Wright
CAROLYN WRIGHT
JUSTICE

Opinion

Writ of Mandamus Denied; Opinion Issued January 4, 2008

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-01760-CV

IN RE MARY LYNN COLLARD,
Relator

Original Proceeding from the
County Court of Criminal Appeals No. 1
Dallas County, Texas

MEMORANDUM OPINION

Before Justices Wright, O'Neill, and Lang
Opinion by Justice Wright

Relator complains the county court judge has not taken action on her mandamus or ruled on her

motion for stay. Relator has failed to comply with the requirements for filing a petition for writ of mandamus. *See* TEX. R. APP. P. 52.3 and 52.7(a). [7] Accordingly, relator's petition for writ of mandamus is **DENIED**. *See* TEX. R. APP. P. 52.8 (a).

/s/ Carolyn Wright
CAROLYN WRIGHT
JUSTICE

[7] [N.B. This suggests that Collard has to have an order from the *county* appellate court for the *state* appellate court to review, *see* TEX. R. APP. P. 52.3(j)(1)(A), in order that Collard seek relief for the county appellate court's refusal to abide by TEX. R. APP. P. 52.1. Thus, the first panel at least addressed the Point raised, while remarkably leaving open what they consider to be an issue of first impression. However, this second panel is simply mindless. *MLC*]

Rule 14.1(i)(ii)—Additional Orders

2008 Feb 27–State court of criminal appeals denied "motion for leave"

Postcard Notice of ruling

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

RE: Writ No. WR-64,490-02
STYLE: COLLARD, MARY LYNN
TRIAL CT NO: [blank in original]
2/27/2008

This is to advise that the Court has denied without written order motion for leave to file the original application for writ of mandamus.

Louise Pearson, Clerk

MARY LYNN COLLARD
1615 UNIVERSITY DR.
Richardson, TX 75081

AYN31 75081

Pitney Bowes meter information:
0004623940 FEB 28 2008
MAILED FROM ZIP CODE 78701

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

***See* petition**

Rule 14.1(i)(vi)—Additional Essential Materials

2007 Dec 28—State court of criminal appeals files petition, opens case.

Postcard Notice of filing/opening case

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

RE: Writ No. WR-64,490-02
STYLE: COLLARD, MARY LYNN
TRIAL CT NO: [blank in original]
12/28/2007

I have this day received and presented to the Court the original application for writ of mandamus.

Louise Pearson, Clerk

MARY LYNN COLLARD
1615 UNIVERSITY DR.
Richardson, TX 75081

Pitney Bowes meter information:
0004236449 JAN 04 2008
MAILED FROM ZIP CODE 78701